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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,415	03/07/2002	Manuel Nedbal	01.298.01	8892
28875	7590	09/22/2006	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			KANG, INSUN	
			ART UNIT	PAPER NUMBER
			2193	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,415

Applicant(s)

NEDBAL ET AL.

Examiner

Insun Kang

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 12-18, 27-33, 42-48, 57-63, 72-78 and 87-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 12-18, 27-33, 42-48, 57-63, 72-78 and 87-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed 8/31/2006.
2. As per applicant's request, claims 8-10, 23-25, 38-40, 53-55, 68-70, 83-85, 93, and 94 have been cancelled and claims 1, 2, 12, 16, 17, 27, 31, 32, 42-47, 57, 61, 62, 72, 76, 77, and 87 have been amended. Claims 1-3, 12-18, 27-33, 42-48, 57-63, 72-78, and 87-92 are pending in the application.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-3, 12-18, 27-30, and 91-92 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-3, 12-18, 27-30, and 91-92 are non-statutory because they are directed to a "computer program product" without recitation of a computer or a computer-readable medium storing and embodying the claimed code. The claimed product is disembodied arrangement so as to be called a "computer program" or compilation of facts, information, or data *per se*, without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer ("acts") or computer readable medium so as to enable the computer to perform the claimed code as recited. Thus the claims represent non-functional descriptive material that is not capable of producing a useful result, and hence represent only abstract ideas. Therefore, the claims are non-statutory.

Claim Objections

5. Claim 29 is objected to because of the following informalities: There appears to be a minor error in reciting claim 29. The claim "39" in page 7 needs to be corrected to 29. Appropriate correction is required.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-3, 12-18, 27-33, 42-48, 57-63, 72-78, and 87-92 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 7107574.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product and data signal having computer program for performing the method steps.

The following example is given:

Per claim 1:

Patent '574 claims the subject matter such as triggering an operation at a destination computer using XML data transferred between a source computer and said destination computer comprising receiving, parsing, validating, matching, triggering etc operations recited in the claim (i.e. "comparing code operable to compare an XML data representation ...validated program configuration data is sent from said program configuration managing computer to said managed computer as said XML data representation, claim 1). The limitations such as wherein said configuration data store is one of: a Windows Registry entry; an INI file; a DAPI store; and a database entry wherein an identifier of said execution process within said complex data type includes at least one of: data specifying a computer file to trigger said execution process; data specifying a communication channel to trigger said execution process; and data specifying an operating system command to trigger said execution process are also

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disclosed in '574 ("a mapping between keys in an operating system registry to complex data types within said DOM data representation...parsed to identify a plurality of keys and types for associating attributes with a plurality of different instances, claims 2-9).

8. Claims 1-3, 12-18, 27-33, 42-48, 57-63, 72-78, and 87-92 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 9, 14-21, 26, 31-38, 43, and 48-54 of copending Application No. 10/092420. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product and data signal having computer program for performing the method steps.

The following example is given:

Per claim 1:

Copending claim 1 recites the subject matter of: a computer program product for triggering an operation at a destination computer using XML data transferred between a source computer and said destination computer comprising receiving, parsing, matching, triggering, a configuration data store, an identifier, mapping, validating etc recited in claim 1 ("A computer program product for controlling a target computer to perform an

operation in response to data received from an initiation computer... said configuration data store is... to said target computer as XML data... parameter data used by said target process is represented by data within said complex data type of said target process, claims 1-4, 9, 14-17).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-3, 12-18, 27-33, 42-48, 57-63, 72-78, and 87-92 are rejected under 35 U.S.C. 102(e) as being anticipated by Harvey et al. (US Pub. No. 2006/0190575) hereafter Harvey.

Per claim 1:

Harvey discloses:

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- triggering an operation at a destination computer using data transferred between a source computer and said destination computer(i.e. paragraph 0055)
- receiving code to receive at said destination computer operation specifying XML data sent by said source computer(i.e. 0055)
- parsing code to parse said operation specifying XML data to identify one or more complex data types within said operation specifying XML data (i.e. 0055);
- matching code to match the or each complex data type with an associated execution process available to said destination computer (i.e. 0055, 0066, 0067); and

triggering code to trigger processing by the or each execution process associated with a complex data type within said operation specifying XML data (i.e. 0054, 0064);wherein said operation performed includes configuring said destination computer to execute a computer program (i.e. 0144) wherein said execution process maps configuration data specified within said operation specifying XML data to a configuration data store of said destination computer; wherein said configuration data store is one of: a Windows Registry entry; an INI file; a DAPI store; and a database entry (i.e. 0049) wherein an identifier of said execution process within said complex data type includes at least one of: data specifying a computer file to trigger said execution process; data specifying a communication channel to trigger said execution process; and data specifying an operating system command to trigger said execution process (i.e. 0055, 0056)

- wherein said operation includes returning result data from said destination computer to said source computer in dependence upon said operation performed by said execution process (i.e. 0055, 0056)
- wherein said result data includes data specifying existing configuration data of said destination computer (i.e. 0055, 0056)
- wherein said execution process maps existing configuration data of said destination computer stored within a configuration data store of said destination computer to said result data to be returned to said source computer (i.e. 0055, 0056); wherein said operation specifying XML data is parsed after validating said operation specifying XML data to extract at least one identifier for mapping said at least one identifier to an available execution process; wherein said operation specifying XML data includes parameter data used by said execution process in said operation (i.e. 0051, 0055, 0056).

Per claim 2:

The rejection of claim 1 is incorporated, and further, Harvey discloses:

- wherein parameter data used by said execution process is represented by data within said complex data type of said execution process (i.e. 0051, 0055, 0056) as claimed.

Per claim 3:

The rejection of claim 1 is incorporated, and further, Harvey discloses:

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- wherein said operation performed includes making a call to an API available to said destination computer (i.e. 0051, 0055, 0056).

Per claim 12:

The rejection of claim 1 is incorporated, and further, Harvey discloses:

- wherein said result data is passed from said destination computer to said source computer as XML data (i.e. 0051, 0055, 0056).

Per claim 13:

The rejection of claim 1 is incorporated, and further, Harvey discloses:

- wherein said operation includes returning result data from said destination computer to said source computer in dependence upon whether or not said execution process is available to said destination computer (i.e. 0051, 0055, 0056).

Per claim 14:

The rejection of claim 1 is incorporated, and further, Harvey discloses:

- wherein an operation that may be performed by said destination computer includes installing a new execution process (i.e. 0051, 0055, 0056).

Per claim 15:

The rejection of claim 1 is incorporated, and further, Harvey discloses:

-wherein said operation specifying data is validated by said destination computer by comparing with a template defining valid data (i.e. 0051, 0055, 0056).

Per claims 16-18 and 27-30, they are another product versions of claims 1-3 and 12-15, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 12-15 above.

Per claims 31-33 and 42-45, they are the method versions of claims 1-3 and 12-15, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 12-15 above.

Per claims 46-48 and 57-60, they are the method versions of claims 16-18 and 27-30, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 16-18 and 27-30 above.

Per claims 61-63 and 72-75, they are the apparatus versions of claims 1-3 and 12-15, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 12-15 above.

Per claims 76-78 and 87-90, they are the apparatus versions of claims 16-18 and 27-30, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 16-18 and 27-30 above.

Per claim 91:

The rejection of claim 1 is incorporated, and further, Harvey discloses: comprising validating said operation specifying XML data received at said destination computer against schema data, where said schema data is sent to said destination computer from said source computer at the same time as said operation specifying XML data (i.e. 0051, 0055, 0056).

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Per claim 92:

The rejection of claim 1 is incorporated, and further, Harvey discloses: comprising validating said operation specifying XML data received at said destination computer against schema data, where said schema data is present in said destination computer when said operation specifying XML data is sent (i.e. 0051, 0055, 0056).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-3, 12-18, 27-33, 42-48, 57-63, 72-78, and 87-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uszok et al. (US PG Pub. No. 2004/0205772) hereinafter referred to as "Uszok" in view of Kouznetsov et al. (US patent No. 6,931,546) hereafter Kouznetsov.

Per claim 1:

Uszok discloses:

- triggering an operation at a destination computer using data transferred between a source computer and said destination computer(i.e. paragraph 0009)
- receiving code to receive at said destination computer operation

specifying XML data sent by said source computer(i.e. 0050, 0014, 0055)
-parsing code to parse said operation specifying XML data to identify
one or more complex data types within said operation specifying XML data (i.e. 0057);
-matching code to match the or each complex data type with an
associated execution process available to said destination computer (i.e. 0057); and
triggering code to trigger processing by the or each execution process
associated with a complex data type within said operation specifying XML data (i.e.
0054, 0064);wherein said operation performed includes configuring said destination
computer to execute a computer program (i.e. 0144).

Uszok does not explicitly teach that said execution process maps configuration data
specified within said operation specifying XML data to a configuration data store of said
destination computer; wherein said configuration data store is one of: a Windows
Registry entry; an INI file; a DAPI store; and a database entry. However, Kouznetsov
teaches it was known in the pertinent art, at the time applicant's invention was made, to
provide access privilege and installation authorization (i.e. col. 4 lines 25-54) such as
those disclosed in Kouznetsov. It would have been obvious for one having ordinary skill
in the art to modify Uszok's disclosed system to incorporate the teachings of
Kouznetsov. The modification would be obvious because one having ordinary skill in the
art would be motivated to ensure authorized access privilege as suggested by
Kouznetsov (i.e. col. 4 lines 25-54).

Uszok in view of Kouznetsov further discloses: wherein an identifier of said
execution process within said complex data type includes at least one of: data

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specifying a computer file to trigger said execution process; data specifying a communication channel to trigger said execution process; and data specifying an operating system command to trigger said execution process (i.e. 0054, 0064)- wherein said operation includes returning result data from said destination computer to said source computer in dependence upon said operation performed by said execution process (i.e. 0054, 0064)- wherein said result data includes data specifying existing configuration data of said destination computer (i.e. 0054, 0064)- wherein said execution process maps existing configuration data of said destination computer stored within a configuration data store of said destination computer to said result data to be returned to said source computer (i.e. 0054, 0064) wherein said operation specifying XML data is parsed after validating said operation specifying XML data to extract at least one identifier for mapping said at least one identifier to an available execution process; wherein said operation specifying XML data includes parameter data used by said execution process in said operation (i.e. 0054, 0064).

Per claim 2:

The rejection of claim 1 is incorporated, and further, Uszok discloses:

- wherein parameter data used by said execution process is represented by data within said complex data type of said execution process (i.e. 0069,0077,0088) as claimed.

Per claim 3:

The rejection of claim 1 is incorporated, and further, Uszok discloses:

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- wherein said operation performed includes making a call to an API available to said destination computer (i.e. 0137) as claimed.

Per claim 12:

The rejection of claim 1 is incorporated, and further, Uszok discloses:

- wherein said result data is passed from said destination computer to said source computer as XML data (i.e. 0088, 0128) as claimed.

Per claim 13:

The rejection of claim 1 is incorporated, and further, Uszok discloses:

- wherein said operation includes returning result data from said destination computer to said source computer in dependence upon whether or not said execution process is available to said destination computer (i.e. 0050, 0068) as claimed.

Per claim 14:

The rejection of claim 1 is incorporated, and further, Uszok discloses:

- wherein an operation that may be performed by said destination computer includes installing a new execution process (i.e. 0083) as claimed.

Per claim 15:

The rejection of claim 1 is incorporated, and further, Uszok discloses:

-wherein said operation specifying data is validated by said destination computer by comparing with a 10 template defining valid data (i.e. 0073) as claimed.

Per claims 16-18 and 27-30, they are another product versions of claims 1-3 and 12-15, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 12-15 above.

Per claims 31-33 and 42-45, they are the method versions of claims 1-3 and 12-15, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 12-15 above.

Per claims 46-48 and 57-60, they are the method versions of claims 16-18 and 27-30, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 16-18 and 27-30 above.

Per claims 61-63 and 72-75, they are the apparatus versions of claims 1-3 and 12-15, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-3 and 12-15 above.

Per claims 76-78 and 87-90, they are the apparatus versions of claims 16-18 and 27-30, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 16-18 and 27-30 above.

Per claim 91:

The rejection of claim 1 is incorporated, and further, Uszok discloses: comprising validating said operation specifying XML data received at said destination computer against schema data, where said schema data is sent to said destination computer from said source computer at the same time as said operation specifying XML data (i.e. 0051, 0055, 0056).

Per claim 92:

The rejection of claim 1 is incorporated, and further, Uszok discloses: comprising validating said operation specifying XML data received at said destination computer against schema data, where said schema data is present in said destination computer when said operation specifying XML data is sent (i.e. 0051, 0055, 0056).

Response to Arguments

139. Applicant's arguments filed 8/31/2006 have been fully considered but they are not persuasive.

The Applicant states that the excerpts from Uszok and Kouznetsov fail to meet the limitations in the claims.

In response, examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in their entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Further, the present invention solves overhead and flexibility problem in a data transmission system by specifying data in the form of XML data. Uszok discloses mobile

agent based software architecture over the Internet. Uszok states that data can be exchanged in the XML format (i.e. 0065) in the agent based system. Uszok further discloses that the plug-ins can be passed from the botServer manager to plug-in manager, which is the target process. Both managers are performed at the same target computer botServer (fig. 4; 0079; 0080). Uszok states matching mechanism (0133) and the XML-based interaction protocols define a set of states that a bot may exist in, rules of transition from one state to another and a description of the schema of data that can be exchanged between participating parties in order to transition from one state to another (0128). In the mBot architecture, the configuration and task results presentation block is generated (0110) and the mBot can send the result back to the sBot (0111). Therefore, Uszok in view of Kouznetsov discloses the limitations in the claims and the rejections of the claims are maintained. If applicant means anything more, this must be brought out in the claims to further clarify the invention.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Insun Kang whose telephone number is 571-272-3724. The examiner can normally be reached on M-F 7:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 571-272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

I. Kang
AU 2193


KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100